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AMENDED IN ASSEMBLY MAY 14, 2015

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 825

Introduced by Assembly Members Rendon and Mark Stone

February 26, 2015

An act to amend Sections 314.5 and 583 of, to amend, renumber, and add Section 309.1 of, to add Sections 309.2 and 468 to, *and* to add Article 1.5 (commencing with Section 720) to Chapter 4 ~~of, and to repeal and add Article 3 (commencing with Section 1756) of Chapter 9 of, of~~ Part 1 of Division 1 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 825, as amended, Rendon. Public Utilities Commission.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, gas corporations, heat corporations, telegraph corporations, telephone corporations, and water corporations. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates. Existing law requires the commission to appoint an executive director who is responsible for the commission's executive and administrative duties and to organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction. Existing law

authorizes the executive director to employ those officers, administrative law judges, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of the Public Utilities Act or to perform the duties and exercise the powers conferred upon the commission by law.

This bill would prohibit the commission from reassigning any staff member from a duty or activity authorized by statute to another duty or activity unless the Legislature has authorized personnel for that duty or activity. The bill would require the commission's internal auditor to report directly to the commission.

(2) The California Constitution authorizes the commission to establish rules, examine records, and prescribe a uniform system of accounts for all public utilities. The Public Utilities Act requires the commission to inspect and audit the books and records of electrical corporations, gas corporations, heat corporations, telegraph corporations, telephone corporations, and water corporations for regulatory and tax purposes. An inspection and audit is required to be done at least every 3 years if the utility has over 1,000 customers and at least every 5 years if the utility has 1,000 or fewer customers. The act requires that reports of the inspections and audit and other pertinent information be furnished to the State Board of Equalization for use in the assessment of the public utilities.

This bill would delete the requirement that the reports of the inspections and audit and other pertinent information be furnished to the State Board of Equalization for use in the assessment of the public utilities and instead require that the inspections and audit and other pertinent information be posted on the commission's Internet Web site.

(3) Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. With certain exceptions, whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate for the services or commodities furnished by it, existing law requires that the corporation furnish its customers notice of its application to the commission for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the commission filed pursuant to commission-established procedures for advice letters.

This bill would require each public utility that submits an application to change its rates to include in its application a summary of the application that can be understood by the utility's ratepayers. The bill would require that this summary and the application be posted on the commission's Internet Web site and, if the utility has an Internet Web site, to be posted on the utility's Internet Web site. Each public utility that maintains an Internet Web site would additionally be required to include on that site contact information for a utility official who can discuss the nature of the rate application.

(4) Every public utility is required by existing law to furnish such reports as the commission may require. No information furnished to the commission by a public utility, except those matters specifically required to be open to public inspection, are open to public inspection or made public except by order of the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any information in violation of these provisions is guilty of a misdemeanor.

This bill would provide that if in a proceeding before the commission, a public utility, or subsidiary, affiliate, or holding company, seeks to file a pleading, report, or other document with the commission that preserves the confidentiality of information contained therein, it would be required to file a public version of the pleading, report, or other document that contains sufficient information for any other party to the proceeding to understand the nature of its contents. The bill would authorize any party to the proceeding to file a motion to make public a pleading, report, or other document filed under a claim of confidentiality. The bill would require an administrative law judge assigned to the proceeding or the assigned commissioner to hold a hearing on the motion and determine whether the pleading, report, or other document should be made public. The bill would provide that specified information is by its nature public information and is not to be treated as confidential.

(5) Existing law requires the commission to publish and maintain certain documents and information, including making available on the commission's Internet Web site, the commission's annual work plan, general orders, and Rules of Practice and Procedure, the proposed and alternate proposed decisions and resolutions, the agenda, agenda item documents, rulings of the commission, and adopted decisions and resolutions of the commission.

Existing law requires the commission to establish an office of the public advisor and to appoint a public advisor. Existing law requires

the office of the public advisor to assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission.

This bill would add legislative findings and declarations relative to improving the transparency of commission regulatory activities. The bill would require the public advisor to be responsible for ensuring that the activities of the commission are transparent to the public consistent with these legislative findings and directions, the California Public Records Act, the Bagley-Keene Open Meeting Act, and other specified matter. The bill would require the public advisor to have independent responsibility for overseeing the commission's Internet Web site and would require the commission to post on its Internet Web site a summary, as specified, of all electricity procurement contracts entered into by an electrical corporation during the previous 3 years, the expenses of which the commission has approved as being just and reasonable, a list of all proceedings involving public utilities then pending before the commission with information, in summary form, as to the amount of any rate increase being sought, both in cumulative amount and by unit or other means billed to ratepayers, transcripts and available summaries of documents, evidence, testimony and proceedings before the commission or its administration law judges that are not subject to confidentiality, a list of all requests submitted to the commission pursuant to the California Public Records Act, and all advice letters approved by the commission. The bill would require the commission to open a proceeding to reexamine a specified decision relative to confidentiality of electric procurement data. The bill would require the California State Auditor to appoint an inspector general for the commission who would be authorized to audit and investigate the commission's activities and report any finding to the Legislature.

~~(6) The California Constitution provides that the Legislature has plenary power to establish the manner and scope of review of commission action in a court of record. Existing law provides that only the Supreme Court and the court of appeal have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties.~~

~~This bill would repeal the existing provisions of the Public Utilities Act pertaining to judicial review of commission decisions and would instead authorize any party to a proceeding aggrieved by a decision or~~

~~order issued by the commission in the proceeding to obtain a review of the order in the superior court for the City and County of San Francisco or the County of Los Angeles, by filing in the court, within 60 days after the decision or order of the commission upon the application for rehearing, a written petition praying that the order of the commission be modified or set aside in whole or in part. The bill would require that a copy of the petition be transmitted by the clerk of the court to the commission and would require the commission to file with the court the record upon which the decision or order complained of was entered. The bill would provide that until the record in a proceeding has been filed in the court, the commission may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in whole or in part, any finding or order made or issued by it. The bill would provide that the superior courts for the City and County of San Francisco and the County of Los Angeles are entitled to reimbursement for reasonable and necessary costs of any trial or hearing for any matter brought seeking judicial review of a decision or order of the commission.~~

~~(7)~~

(6) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 309.1 of the Public Utilities Code is
- 2 amended and renumbered to read:
- 3 305.5. The Governor may appoint one adviser for each member
- 4 of the commission upon the request of the commission member.
- 5 Each adviser shall receive a salary fixed by the commission with

1 the approval of the Department of Human Resources. The total
2 number of advisers exempt from civil service shall not exceed
3 five.

4 SEC. 2. Section 309.1 is added to the Public Utilities Code, to
5 read:

6 309.1. The commission shall not reassign any staff member
7 from a duty or activity authorized by statute to another duty or
8 activity unless the Legislature has authorized personnel for that
9 duty or activity.

10 SEC. 3. Section 309.2 is added to the Public Utilities Code, to
11 read:

12 309.2. The commission's internal auditor shall report directly
13 to the commission.

14 SEC. 4. Section 314.5 of the Public Utilities Code is amended
15 to read:

16 314.5. The commission shall inspect and audit the books and
17 records for regulatory and tax purposes (a) at least once in every
18 three years in the case of every electrical, gas, heat, telegraph,
19 telephone, and water corporation serving over 1,000 customers,
20 and (b) at least once in every five years in the case of every
21 electrical, gas, heat, telegraph, telephone, and water corporation
22 serving 1,000 or fewer customers. An audit conducted in
23 connection with a rate proceeding shall be deemed to fulfill the
24 requirements of this section. Reports of the inspections and audits
25 and other pertinent information shall be posted on the commission's
26 Internet Web site.

27 SEC. 5. Section 468 is added to the Public Utilities Code, to
28 read:

29 468. (a) Each public utility that submits an application to
30 change its rates shall include in its application a summary of the
31 application that can be understood by the utility's ratepayers. This
32 summary and the application shall be posted on the commission's
33 Internet Web site and, if the utility has an Internet Web site, shall
34 be posted on the utility's Internet Web site.

35 (b) Each public utility that maintains an Internet Web site shall
36 include on that site contact information for a utility official who
37 can discuss the nature of the rate application. If the rate application
38 includes different rates depending upon the utility's service
39 territory, the contact information shall identify a utility official
40 who can discuss the nature of the rate application for each separate

1 service territory. The utility official shall also be qualified to
2 discuss, in general terms, the operation of the utility in each service
3 territory.

4 SEC. 6. Section 583 of the Public Utilities Code is amended
5 to read:

6 583. (a) No information furnished to the commission by a
7 public utility, or any business that is a subsidiary or affiliate of a
8 public utility, or a corporation that holds a controlling interest in
9 a public utility, except those matters specifically required to be
10 open to public inspection by this part, shall be open to public
11 inspection or made public except on order of the commission, or
12 by the commission or a commissioner in the course of a hearing
13 or proceeding. Any present or former officer or employee of the
14 commission who divulges that information is guilty of a
15 misdemeanor.

16 (b) If in a proceeding before the commission, a public utility,
17 or any business that is a subsidiary or affiliate of a public utility,
18 or a corporation that holds a controlling interest in a public utility,
19 seeks to file a pleading, report, or other document with the
20 commission that preserves the confidentiality of information
21 contained therein, it shall file a public version of the pleading,
22 report, or other document that contains sufficient information for
23 any other party to the proceeding to understand the nature of its
24 contents. An administrative law judge assigned to the proceeding,
25 the assigned commissioner, or the commission may determine the
26 sufficiency of the information contained in the public version of
27 the pleading, report, or other document.

28 (c) Any party to a proceeding before the commission may file
29 a motion to make public a pleading, report, or other document filed
30 by a public utility, or any business that is a subsidiary or affiliate
31 of a public utility, or a corporation that holds a controlling interest
32 in a public utility, under a claim of confidentiality. An
33 administrative law judge assigned to the proceeding or the assigned
34 commissioner shall hold a hearing on the motion and determine
35 whether the pleading, report, or other document should be made
36 public. In determining the motion, the administrative law judge or
37 assigned commissioner shall make written findings and
38 conclusions.

39 (d) At any public hearing, an assigned administrative law judge
40 may provide direction to the parties in a proceeding as to what

1 types of information may be filed with the commission under a
2 claim of confidentiality.

3 (e) The following information is by its nature public information
4 and shall not be treated as confidential pursuant to this section:

5 (1) Information submitted to any local, state, or federal entity
6 that is available to the public from that entity.

7 (2) Information regarding a public utility's interactions with a
8 public entity that is available to the public, including information
9 related to payments or subsidies from a public entity.

10 (3) Contracts for goods or services executed by the commission
11 or by any entity created by the commission.

12 (4) Any document that is defined as a public record pursuant to
13 the California Public Records Act (Chapter 3.5 (commencing with
14 Section 6250) of Division 7 of Title 1 of the Government Code).

15 SEC. 7. Article 1.5 (commencing with Section 720) is added
16 to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code,
17 to read:

18
19 Article 1.5. Transparency of Commission Regulatory Activities

20
21 720. The Legislature finds and declares all of the following:

22 (a) Transparency in how the commission operates and makes
23 its decisions is critical to gaining and retaining the confidence of
24 the public at large and serving the public utility ratepayers affected
25 by the commission's decisions.

26 (b) The activities of private entities that provide essential
27 services to the public and that have dedicated their property to the
28 service of the public are defined as public utilities in the California
29 Constitution, subject to the control by the Legislature.

30 (c) The services provided by public utilities are essential to the
31 proper operation of our economy and fundamentally affect every
32 California family and business.

33 (d) Under the California Constitution, the commission is granted
34 authority to establish its own procedures subject to statute and due
35 process and to establish rules for public utilities, and the Legislature
36 has plenary authority to confer additional authority and jurisdiction
37 upon the commission and to establish the manner and scope of
38 review of commission action in a court of record.

39 (e) Because the California Constitution provides special
40 consideration to public utilities and to the commission that

1 regulates those public utilities, it is essential to give the public the
2 ability to monitor the functioning of the commission and its actions.

3 (f) The greater and more unfettered the public official's power,
4 the greater the public's interest in monitoring the exercise of that
5 power.

6 (g) Access to information concerning the conduct of the public's
7 business by the commission is a fundamental and necessary right
8 for every person in the state.

9 (h) Information concerning services provided by public utilities
10 is of the highest public interest, including information about quality
11 and reliability of service to the public and information about costs
12 and profits.

13 (i) While confidentiality of information submitted by a public
14 utility may be necessary in some cases, as provided in Section 583,
15 the activities and decisions of the commission should remain as
16 transparent as reasonably possible.

17 721. The commission shall open a proceeding to reexamine
18 Decision 06-06-066 (June 29, 2006) Interim Opinion Implementing
19 Senate Bill 1488, Relating to Confidentiality of Electric
20 Procurement Data Submitted to the Commission, as modified by
21 Decision 07-05-032 (May 3, 2007), Order Modifying Decision
22 (D.) 06-06-066 and Denying Rehearing of the Decision, as
23 Modified. The commission shall narrow the definitions of
24 confidential data types consistent with Sections 583 and 720.

25 722. (a) The public advisor of the commission, appointed
26 pursuant to Section 321, shall have responsibility for ensuring that
27 the activities of the commission are transparent to the public as
28 provided by law, including, but not limited to, the California Public
29 Records Act (Chapter 3.5 (commencing with Section 6250) of
30 Division 7 of Title 1 of the Government Code), the Bagley-Keene
31 Open Meeting Act (Article 9 (commencing with Section 11120)
32 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
33 Code), and this article.

34 (b) The commission shall provide funding for the costs of the
35 office of the public advisor from reimbursement fees paid pursuant
36 to Chapter 2.5 (commencing with Section 401).

37 (c) The public advisor shall develop and make available
38 easy-to-understand guides for the public to participate in
39 commission proceedings.

1 723. The California State Auditor shall appoint to the staff of
2 the California State Auditor's Office an inspector general for the
3 commission, which shall report any findings to the Legislature.
4 The inspector general shall have authority, including the authorities
5 of the California State Auditor, to audit and investigate the
6 commission's activities based on information it receives. The
7 California State Auditor may recover the costs for the inspector
8 general's activities from reimbursement fees paid pursuant to
9 Chapter 2.5 (commencing with Section 401).

10 724. (a) The public advisor of the commission shall have
11 independent responsibility for overseeing the commission's Internet
12 Web site, in order to ensure adequate transparency in the
13 information provided to the public.

14 (b) The commission shall make available to the public on its
15 Internet Web site all of the following information:

16 (1) A summary of all electricity procurement contracts entered
17 into by an electrical corporation during the previous three years,
18 the expenses of which the commission has approved as being just
19 and reasonable. The summary shall include information as to the
20 name of the generating facility, its location, the electricity or
21 electricity products procured, the fuel or energy source used to
22 generate the electricity, the estimated total expense that the
23 electrical corporation will incur pursuant to the contract, the
24 estimated cost by unit of energy that the electrical corporation will
25 incur pursuant to the contract, when the contract was approved by
26 the commission, and, if applicable, the decision or resolution
27 approving the contract. Information on costs of the contract shall
28 not be posted until the electrical corporation has completed the
29 legal transactions required to acquire the electricity or electricity
30 products.

31 (2) A list of all proceedings involving public utilities then
32 pending before the commission with information, in summary
33 form, as to the amount of any rate increase being sought, both in
34 cumulative amount and by unit or other means billed to ratepayers.

35 (3) Transcripts and available summaries of documents, evidence,
36 testimony, and proceedings before the commission or its
37 administrative law judges that are not subject to confidentiality
38 pursuant to Section 583.

39 (4) A list of all requests submitted to the commission pursuant
40 to the California Public Records Act (Chapter 3.5 (commencing

1 with Section 6250) of Division 7 of Title 1 of the Government
2 Code).

3 (5) Advice letters approved by the commission.

4 SEC. 8. ~~Article 3 (commencing with Section 1756) of Chapter~~
5 ~~9 of Part 1 of Division 1 of the Public Utilities Code is repealed.~~

6 SEC. 9. ~~Article 3 (commencing with Section 1756) is added~~
7 ~~to Chapter 9 of Part 1 of Division 1 of the Public Utilities Code,~~
8 ~~to read:~~

10 Article 3. Judicial Review

11
12 ~~1756. (a) Any party to a proceeding aggrieved by a decision~~
13 ~~or order issued by the commission in the proceeding may obtain~~
14 ~~a review of the order in the superior court for the City and County~~
15 ~~of San Francisco or the County of Los Angeles, by filing in the~~
16 ~~court, within 60 days after the decision or order of the commission~~
17 ~~upon the application for rehearing, a written petition praying that~~
18 ~~the order of the commission be modified or set aside in whole or~~
19 ~~in part.~~

20 ~~(b) No objection to the order of the commission shall be~~
21 ~~considered by the court unless the objection shall have been urged~~
22 ~~before the commission in the application for rehearing unless there~~
23 ~~is reasonable ground for failure so to do.~~

24 ~~(c) A copy of the petition shall forthwith be transmitted by the~~
25 ~~clerk of the court to the commission and the commission, upon~~
26 ~~receipt of the petition, shall file with the court the record upon~~
27 ~~which the decision or order complained of was entered. Upon the~~
28 ~~filing of the petition, the court shall have jurisdiction, which upon~~
29 ~~the filing of the record with it, shall be exclusive, to affirm, modify,~~
30 ~~or set aside the decision or order in whole or in part.~~

31 ~~(d) Until the record in the proceeding has been filed in the court,~~
32 ~~the commission may at any time, upon reasonable notice and in~~
33 ~~any manner it determines is proper, modify or set aside, in whole~~
34 ~~or in part, any finding or order made or issued by it.~~

35 ~~(e) If any party applies to the court for leave to produce~~
36 ~~additional evidence, and shows to the satisfaction of the court that~~
37 ~~the additional evidence is material and that there were reasonable~~
38 ~~grounds for failure to produce the evidence in the proceedings~~
39 ~~before the commission, the court may order the additional evidence~~
40 ~~to be taken before the commission and to be produced upon the~~

1 hearing in a manner and upon those terms and conditions as the
2 court determines are proper.

3 ~~1757. (a) The superior courts for the City and County of San~~
4 ~~Francisco and the County of Los Angeles shall be entitled to~~
5 ~~reimbursement for reasonable and necessary costs of any trial or~~
6 ~~hearing for any matter brought pursuant to Section 1756, including~~
7 ~~the costs for the preparation of the trial, pretrial hearing, and the~~
8 ~~actual trial or hearing. Reasonable and necessary costs shall be~~
9 ~~based upon all operating costs, including all administrative costs~~
10 ~~associated with providing the necessary services and securing~~
11 ~~reimbursement therefor. Administrative costs include a proportional~~
12 ~~allowance for overhead determined in accordance with current~~
13 ~~accounting practices.~~

14 ~~(b) The superior courts for the City and County of San Francisco~~
15 ~~and the County of Los Angeles shall prepare a statement of costs~~
16 ~~that shall be reimbursed pursuant to this section. The statement~~
17 ~~shall be sent to the Administrative Office of the Courts for approval~~
18 ~~and reimbursement.~~

19 ~~SEC. 10.~~

20 *SEC. 8.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.